

Mortgage Law Update

Rulemaking by the Consumer Financial Protection Bureau (CFPB) or Bureau

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The CFPB was created pursuant to Title 10 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and is responsible for rulemaking for the following consumer financial protection regulations:

Regulation B: Equal Credit Opportunity Act (12 CFR Part 1002)

Regulation C: Home Mortgage Disclosure Act (12 CFR Part 1003)

Regulation D: Alternative Mortgage Parity Act (12 CFR Part 1004)

Regulation E: Electronic Fund Transfers Act (12 CFR Part 1005)

Regulation F: Fair Debt Collection Practices Act (12 CFR Part 1006)

Regulation G: S.A.F.E. Mortgage Licensing Act – Federal Registration
of Residential Mortgage Loan Originators (12 CFR Part 1007)

Regulation H: S.A.F.E. Mortgage Licensing Act – State Compliance and
Bureau Registration System (12 CFR Part 1008)

Regulation I: Disclosure Requirements for Depository Institutions
Lacking Federal Deposit Insurance (12 CFR Part 1009)

Regulation J: Land Registration (12 CFR Part 1010)

Regulations continued

Regulation K: Purchasers' Revocation Rights, Sales Practices and Standards (12 CFR Part 1011)

Regulation L: Special Rules of Practice (12 CFR Part 1012)

Regulation M: Consumer Leasing (12 CFR Part 1013)

Regulation N: Mortgage Acts and Practices-Advertising (12 CFR Part 1014)

Regulation O: Mortgage Assistance Relief Services (12 CFR Part 1015)

Regulation P: Privacy of Consumer Financial Information (12 CFR Part 1016)

Regulation V: Fair Credit Reporting (12 CFR Part 1022)

Regulation X: Real Estate Settlement Procedures Act (12 CFR Part 1024)

Regulation Z: Truth in Lending (12 CFR Part 1026)

Regulation DD: Truth in Savings (12 CFR Part 1030)

CFPB 2013 Mortgage Final Rules Overview

- Title XIV of the Dodd-Frank Act created broad new consumer protections for mortgage loans
- Most requirements were set to take effect on January 21, 2013, unless the Bureau issued rules by that date
- The new rules will be implemented over the next year, with most taking effect on January 10, 2014
- A summary of each rule and the rules themselves are available on the Bureau's website at www.consumerfinance.gov/regulations

Ability-to-Repay (ATR) /Qualified Mortgage(QM) Final Rule

Ability-to-Repay/Qualified Mortgages (ATR/QM) Final Rule under Reg Z

- General ability-to-repay requirement
 - Applies broadly to closed-end transactions secured by a dwelling
 - Requires creditor to make a reasonable, good faith determination that consumer can repay the loan
- Qualified mortgages
 - Restricts certain loan features, caps points and fees, and imposes certain underwriting requirements
 - Safe-harbor for loans below the higher-priced mortgage threshold; rebuttable presumption for higher-priced loans

Ability-to Repay (ATR)

Creditor must make a reasonable and good faith determination that the consumer will have a reasonable ability to repay the loan according to its terms

- Consider and verify certain consumer-specific information
- Requirements for calculating mortgage payment
- No specific requirements for loan features or points and fees

Qualified Mortgage (QM) Features

- Limits on Loan Features

- No Negative amortization or interest-only periods
- No Balloon payments (except for certain portfolio loans by small creditors in rural or underserved areas)
- Loan term may not exceed 30 years

- Points and fees

- Generally three percent of total loan amount
- Higher caps for loans <\$100,000
- Up to two additional bona fide discount points allowed depending on rate

- Relevant Underwriting Requirements

- Use maximum rate in first five years after first payment, full amortization
- Consider and verify income and assets
- Consider and verify current debt obligations, alimony, and child support
- Monthly debt-to-income ratio cannot exceed 43%

Qualified Mortgage (QM): Temporary Alternative QM

- Limits on Loan Features
 - Same as permanent definition
- Points and fees cap
 - Same as permanent definition
- Relevant underwriting requirements (alternative)
 - Must be eligible for purchase, guarantee, or insurance by:
 - Fannie Mae or Freddie Mac (sunsets when conservatorship ends or seven years)
 - HUD, VA, Department of Agriculture or Rural Housing Service (sunsets when agency rules take effect or seven years)

Qualified Mortgages – Balloon Payments

- Balloon payment QM allowed in certain circumstances
 - Same limits on loan features, points and fees as general QM (other than balloon restriction)
 - Payment and underwriting requirements modified from general QM
 - Use loan term of no less than five years, amortization of no more than 30 years
 - No 43% DTI requirement, but must consider and verify debts, income, and DTI or residual income
 - Creditor meets certain other size and market requirements
 - More than 50% of first-lien mortgages must be in rural or underserved counties;
 - Has less than \$2 billion in assets; and
 - With affiliates, originates no more than 500 first-lien mortgages per year

Qualified Mortgages – Balloon Payments (Continued)

- If balloon loan is transferred, loses QM status unless
 - At least three years after origination; or
 - To another qualifying creditor, under an agreement with a prudential regulator, or as part of a merger

Qualified Mortgage: Presumption of Compliance

- Safe Harbor

- Loan Satisfies QM criteria and
- APR is less than:
 - First liens: APOR +1.5%
 - Second Liens: APOR + 3.5%

- Rebuttable Presumption

- Loan Satisfies QM criteria and
- APR equals or exceeds:
 - First liens: APOR + 1.5%
 - Second Liens: APOR + 3.5%

Rebuttal limited to insufficient residual income

Concurrent Proposal: Comments were due by Feb. 25, 2013 (Issued with ATR/QM Rule)

- Exemptions

- Community development lending programs
 - CDFIs, CHDOs, etc.
 - Non-profits that make no more than 100 LMI loans per year
- Government stabilization and refinancing programs

- Small creditor portfolio QM

- Creditors must have <\$2 billion in assets and (with affiliates) originate ≤ 500 first-lien loans per year; no restriction on location
- Must generally be held in portfolio for three years
- Threshold for safe harbor increased to 3.5% above APOR

Concurrent Proposal (Continued)

- Points and fees calculation
 - Sought comment on calculation of loan originator compensation, particularly
 - where payments are passed from one party to another
 - definitions and other harmonization

Mortgage Servicing Final Rule

Mortgage Servicing Final Rule

- Amends Regulation Z (TILA)
 - Periodic statement required
 - ARM disclosure requirements
 - Prompt crediting and payoff statements
- Amends Regulation X (RESPA)
 - Error resolution and information requests
 - Force-place insurance
 - General servicing policies and procedures
 - Early intervention and continuity of contact
 - Loss mitigation procedures and dual tracking

Servicing For All Borrowers

- Periodic Statements
 - Must be provided for each billing cycle
 - Not required for fixed-rate mortgage loans if a coupon book is provided
- ARM Interest Rate Adjustment Notices
 - New One-Time Initial ARM Notice (20(d) Notice: 210 to 240 days prior to the first payment due after the rate first adjusts
 - Revised 20(c) ARM Notice: 60 to 120 days prior to the first payment due after the rate adjusts if payment will change
- Error Resolution and Information Requests
 - Acknowledgement of written error notices or information requests generally required in 5 days; response generally required within 30 days

Mortgage Servicing – Force-Placed Insurance

- Force-Placed Insurance: Servicers may not charge a borrower for force-placed insurance coverage unless
 - The servicer has a reasonable basis to believe the borrower has failed to maintain hazard insurance required by the loan contract
 - The servicer has provided
 - an initial notice at least 45 days before charges imposed; and
 - a reminder notice at least 30 days after the first notice and at least 15 days before charges imposed
 - The charges are for services actually performed and bear a reasonable relationship to servicer's cost of providing the service
- Escrowed borrowers
 - Servicer may not force-place insurance if servicer can maintain delinquent borrower's existing coverage by advancing funds

Servicing for Delinquent Borrowers

- Early Intervention
 - By 36th day, make good faith effort to contact borrowers
 - By 45th day, provide written information to borrowers
- Continuity of Contact
 - Policies and procedures to assign support personnel
 - Policies and procedures to ensure that personnel can access borrower provided information and provide such information to decision makers
- Application Receipt and Completion
 - Screen applications received 45 days before foreclosure sale; identify missing information and send acknowledgement within 5 days
 - Servicer must exercise reasonable diligence to obtain missing items

Servicing for Delinquent Borrowers (Cont.)

- Evaluation and Notification

- Evaluate a complete application received more than 37 days before foreclosure sale for all loss mitigation options within 30 days
- Provide written decision including reasons for loan modification denials

- Appeal

- If a complete application received 90 or more days before foreclosure sale, borrower may appeal denial of a loan modification
- Appeal determined in 30 days by independent servicer personnel

Servicing for Delinquent Borrowers (Cont.)

Dual Tracking

- **120 day prohibition:** A servicer may not make the first notice or filing required for foreclosure for a borrower 120 days or less delinquent.
- **Foreclosure start:** If a borrower submits a complete loss mitigation application before a servicer starts foreclosure (including during the 120 day prohibition), a servicer may not start foreclosure until the servicer has evaluated the application for all available loss mitigation options, notified the borrower of the result, and one of the following has occurred:
 - Servicer denies application and time for appeal has expired,
 - Borrower declines or fails to accept loss mitigation option, or
 - Borrower fails to comply with loss mitigation agreement

Servicing for Delinquent Borrowers (Cont.)

Dual Tracking

- **Foreclosure completion:** If a complete application is received after foreclosure starts but more than 37 days before a scheduled sale, a servicer may not complete the foreclosure until the servicer has evaluated the application for all available loss mitigation options, notified the borrower of the result, and one of the previous steps has occurred. Servicer must notify foreclosure counsel retained by the servicer that a complete application has been received.

Servicing for Delinquent Borrowers (Cont.)

Policies and Procedures

- Servicers are required to maintain policies and procedures reasonably designed to properly evaluate loss mitigation applications, including:
 - Consulting with owners/investors so as to identify in advance which *specific* loss mitigation options are permitted and when specific information/documents are required from the borrower
 - Providing accurate information regarding available options to borrowers
 - Promptly providing personnel who evaluate loss mitigation options with documents and information submitted by borrower
 - Evaluating borrowers for loss mitigation application under criteria established by owners/investors
 - Reporting back to owners/investors on application outcomes
- Other policies and procedures are required to address accurate borrower accounts, servicing transfers, oversight of vendors, accurate transmission of information to courts, etc.

Small Servicer Exemption

“Small Servicers” Are Exempt from Certain Servicing Rules

- A “small servicer” services 5,000 or fewer mortgage loans, all of which are owned by or were originated by the servicer or its affiliates
 - Small servicer determinations made each January 1 for the following calendar year, based on number of loans serviced by servicer and affiliates
 - Includes Housing Finance Agencies regardless of size
 - For any loan, a master and any subservicer must each be a “small servicer”
- Exemption applies to periodic statement, requirement to advance from escrow to maintain insurance under certain circumstances, policies and procedures, most loss mitigation requirements

Loan Originator Compensation and Qualification Final Rule

Loan Originator (LO) Compensation and Qualification - Amends Regulation Z (TILA)

- Prohibits compensation based on a term of a transaction or proxy for a term
 - Permits certain contributions to retirement plans or certain profits-based compensation funded by profits from a mortgage business
- Prohibits dual compensation from consumer and creditor/other
 - Permits brokerage firms to pay individual broker commissions if not based on terms
- Makes loan originator screening and training requirements more consistent between banks and non-banks
- Implements requirement to list loan originator ID numbers on certain loan documents
- Prohibits mandatory arbitration agreements and single-premium credit insurance financed by creditor (effective June 1, 2013)

LO Compensation and Qualification (Cont.)

- Individual LOs Must Be “Qualified”
 - Registered or licensed as required under State and Federal law
 - LOs employed by depositories and bona fide non-profits: Subject to qualification requirements
 - Background checks
 - Character and fitness
 - Training
- LO Organizations
 - Must ensure that their employees are licensed or registered to the extent required under the SAFE Act or State law; and
 - LOs must provide their NMLS unique identifiers on loan documents

High Cost Mortgage (HOEPA) and Homeownership Counseling (TILA and RESPA) Final Rule

High-Cost Mortgages (HOEPA)

- Implements Dodd-Frank Act changes to Homeownership and Equity Protection Act (HOEPA)
 - Coverage expanded to include HELOCs and purchase-money mortgages
 - Existing coverage thresholds revised
 - New prepayment threshold added

Homeownership Counseling

- Amends Regulation Z (TILA)
 - New counseling requirement for negative amortization loans
- Amends Regulation X (RESPA)
 - Creditors must provide homeownership counseling lists to borrowers in most mortgage transactions

Escrow (TILA) and Appraisal (TILA and ECOA) Requirements Final Rules

Escrows Rule Amends Reg Z (TILA)

- Requires escrow accounts for first five years on first lien higher-priced mortgage loans (HPML)
- Exemption for certain portfolio loans by small creditors that operate predominantly in rural or underserved areas
- Takes effect June 1, 2013

Interagency Appraisals Rule (TILA) Final Rule

- Appraisal required for higher-priced mortgage loans (HPML)
- Notice at application
- Free copy of appraisal at least three days before consummation
- Second appraisal for “flips”
- Exemptions

Appraisals Rule (ECOA) Final Rule

- Requires creditors to provide free copy of appraisal
- Notice
- Borrower can waive timing for copies of appraisals

Integrated Mortgage Disclosures under RESPA (Reg X) and TILA (Reg Z) Proposed Rule

Integrated Mortgage Disclosures (Proposed Rule)

- Scope of Proposed Rule
 - Most Closed-End Consumer Mortgages
 - De-minimis exemption
- The loan Estimate
 - Replaces two forms – TIL and GFE
 - Lender liable for accuracy
 - Within three days of application
 - Limitation on fees
- The Closing Disclosure
 - Replaces two forms – Final TIL and HUD-1
 - Three days prior to closing
 - Lender liable for accuracy

Integrated Mortgage Disclosures (Proposed Rule)(Cont.)

- Limits on Closing Cost Increases
- Changes to APR
- Electronic Recordkeeping

Resource Guide

Links to Helpful Info

- Licensing and registration information for licensees
<http://mortgage.nationwidelicensingsystem.org>
- Consumer Access to identify licensees
<http://www.nmlsconsumeraccess.org/>
- CFPB's website
<http://www.consumerfinance.gov>
- Department of Consumer Affairs
<http://www.consumer.sc.gov/> Phone (803) 734-4200 or (800) 922-1594 (toll free in S.C.)
- SC Bd of Financial Institutions, Consumer Finance Div
<http://www.consumerfinance.sc.gov/> 803-734-2020

Questions?

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